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HOUSE BILL 3365 By  
Williams (Wil)

SENATE BILL 3358  
By Jordan

AN ACT to enact the Preservation of Tennessee Antiquities Act of  
1998 and to amend various provisions of Tennessee Code  
Annotated accordingly.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Tennessee Preservation  
of Antiquities Act of 1998".

SECTION 2. It is hereby declared to be the public policy and in the public interest  
of the state of Tennessee to locate, protect, and preserve all sites, objects, buildings,  
shipwrecks, and locations of historical, archaeological, or architectural significance,  
including, but not limited to historically or architecturally significant buildings, structures  
relating to significant engineering accomplishments, prehistoric and historical American  
Indians such as, original campsites, dwellings, and habitation sites, archaeological sites  
of every character, treasure imbedded in the earth, sunken or abandoned ships and  
wrecks or any part or the contents thereof, maps, records, documents, books, artifacts,  
and implements of culture in any way related to the inhabitants, prehistory, history,  
natural history, government, or culture in, on, or under any of the lands and submerged  
lands, within the jurisdiction of the State of Tennessee.

SECTION 3. For the purpose of this act, the following definitions shall apply:

(a) "Historical significance" means that quality or qualities associated with  
events that have made a significant contribution to the broad patterns of state,

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local or national history, or that quality or qualities associated with the lives of persons significant in local, state, or national history.

(b) "Architectural significance" means the qualities which embody the distinctive characteristics of type, period or method of construction, or that represent the work of a master, or that possess high artistic value.

(c) "Archaeological significance" means possessing the quality or qualities which have yielded, or may be likely to yield information important in Tennessee prehistory or history.

(d) "Department" means the Tennessee Department of Conservation and Environment.

(e) "Commission" means the Tennessee Historical Commission.

(f) "Agency" means any administrative division of the state of Tennessee, its counties, cities or political subdivisions thereof.

(g) "Restoration" means the returning of an object, building, structure or site to a prior condition or to an original historic appearance.

SECTION 4. The duties of the commission shall be to determine the site of and to designate Tennessee Landmarks; to remove from such designation certain of such sites as hereinafter provided; to contract or otherwise provide for the discovery and salvage operations herein covered; to consider the requests for and issue the permits hereinafter provided for; and to protect and preserve the archaeological, historical and architectural resources of the state of Tennessee. The commission shall be the legal custodian of all items hereinafter described which have been recovered and retained by the state of Tennessee, and shall maintain an inventory of such items showing the description and depository thereof.

SECTION 5. All sunken or abandoned ships and wrecks, and any part or the contents thereof, and all treasure imbedded in the earth, located in, on, or under the surface of lands belonging to the state of Tennessee, including its submerged lands and the beds of its rivers

within the jurisdiction of the state of Tennessee are hereby declared to be Tennessee Landmarks and are the sole property of the state of Tennessee and may not be taken, altered, damaged, destroyed, salvaged or excavated without a contract or permit of the commission.

#### SECTION 6.

(1) All other sites, objects, buildings, artifacts, implements, and locations of archaeological significance, including, but expressly not limited to, those pertaining to prehistoric and historical American Indian or all original campsites, dwellings, and habitation sites, their artifacts and implements of culture, as well as archaeological sites of every character that are located in, on or under the surface of any lands belonging to the state of Tennessee or to any county, city, or political subdivision of the state, are hereby declared to be Tennessee Landmarks and are the sole property of the state of Tennessee. Such sites may not be taken, altered, destroyed, salvaged or excavated without a permit from the commission or in violation of the terms of such permit.

(2) All other sites, objects, buildings, artifacts, implements, structures and locations of historical or architectural significance located in or under the surface of any lands belonging to the state of Tennessee or to any county, city or political subdivision of the state may be declared to be Tennessee Landmarks by majority vote of the commission. Every Tennessee Landmark shall be so designated based upon its significance within the historical or architectural patterns of a community, a county, the state of Tennessee, or the United States of America. Upon such action by the commission, the designation of the Tennessee Landmark shall be recorded in the deed records of the county in which the landmark is located. All such designated sites or items located on public lands within the state of Tennessee may not be taken, altered, damaged, destroyed, salvaged, restored, renovated or excavated without a permit from the commission or in violation of the terms of such permit.

(3) All such sites or items located on private lands within the state of Tennessee that have been designated as Tennessee Landmarks as hereinafter provided, may not be taken, altered, damaged, destroyed, salvaged, restored, renovated or excavated without a permit from the commission or in violation of the terms of such permit. Such designation shall be reduced to recordable form, sufficiently describing the site so that it may be located and shall be recorded in the deed records of the county in which the landmark is located.

SECTION 7. Any site located upon private lands which is determined by majority vote of the commission to be of sufficient archaeological, historical or architectural significance may be designated by the commission as a Tennessee Landmark. It is specifically provided, however, that no such site shall be so designated upon private land without the written consent of the landowner or landowners in recordable form sufficiently describing the site so that it may be located. Upon such designation the consent of the landowner shall be recorded in the deed records of the county in which the land is located. Any such site upon private land shall be marked by at least one (1) marker, approved by the commission, bearing the words "Tennessee Landmark" for each five (5) acres of area.

SECTION 8. Upon majority vote of the commission, any Tennessee landmark on public or private land may be determined to be of no further historical, archaeological, or architectural significance, or not of sufficient significance to warrant its further classification as such, and upon such determination it may be removed from such designation. In the case of sites located on private land that have theretofore been, the commission is authorized to cause to be executed and recorded in the deed records of the county where such site is located an instrument setting out such determination and releasing the site from the provisions thereof.

SECTION 9. The commission shall be authorized to enter into contracts with other state agencies or institutions and with qualified private institutions, corporations, or individuals for the discovery and salvage of treasure imbedded in the earth, sunken or abandoned ships or

wrecks, parts thereof and their contents. Such contracts are to be on forms approved by the Attorney General. The contracts may provide for fair compensation to the salvage in terms of a percentage of the reasonable cash value of the objects recovered, or at the discretion of the commission of a fair share of the objects recovered. The amount constituting a fair share shall be determined by the commission, taking into consideration the circumstances of each such operation. The reasonable cash value may be determined by contract provision providing for appraisal by qualified experts or by representatives of the contracting parties and their representative or representatives. Such contract shall provide for the termination of any right in the salvager or permittee thereunder upon the violation of any of the terms thereof. Superior title to all objects recovered shall be retained by the state of Tennessee unless and until it is released to the salvager or permittee by the commission. No person, firm, or corporation may conduct such salvage or recovery operation herein described without first obtaining such contract. All such contracts shall specify, among other things, the location, nature of the activity, and the time period covered thereby, and when executed are to be recorded by the person, firm, or corporation obtaining such contract, in the office of the chancery clerk, in the county or counties where such operations are to be conducted prior to the commencement of such operation.

The commission shall be authorized to conduct surveys to identify Tennessee Landmarks on or under all lands and waters belonging to the state of Tennessee or any county, city, or political subdivisions of the state and to excavate or study all Tennessee Landmarks. The commission shall be further authorized to identify and excavate historic, architectural, or archaeological sites on private property, however, it is specifically provided that no such survey may be undertaken on private land without consent of the landowner and that no excavation may be undertaken on private land without the landowner's written consent.

SECTION 10. The commission shall be authorized to issue permits to other state agencies or institutions and to qualified private institutions, companies, or individuals for the

taking, salvaging, excavating, restoring, or the conducting of scientific or educational studies at, in, or on Tennessee Landmarks as in the opinion of the commission would be in the best interest of the state of Tennessee. Such permits may provide for the retaining by the permittee of a portion of any recovery, as set out for contracting parties. Such permit shall provide for the termination of any rights in the permittee thereunder upon the violation of any of the terms thereof and shall be drafted in compliance with forms approved by the Attorney General. All such permits shall specify, among other things, the location, nature of the activity, and time period covered thereby. No person, firm, or corporation shall conduct any such operations on any Tennessee Landmarks without first obtaining and having in his or its possession such permit at the site of such operation, nor shall such operations be conducted in violation of the provisions of such permit.

#### SECTION 11.

(1) In the early stages of planning and always prior to the letting of bids for public construction, public improvement of any nature, or the transfer of public property to private ownership, state agencies, local governments and all their political subdivisions shall notify the commission of the planned action on a form supplied by the commission. The commission may survey the affected area, property, structure, or building, to determine if potential Tennessee Landmarks will be affected, or if significant sites, buildings, or structures on nonpublic lands will be affected.

(2) If the department determines that significant historic, architectural, or archaeological sites, buildings, structures, locations, or remains will be adversely affected by the public construction or improvement, the proposed public construction or improvement may not be commenced until the department has issued the permit herein required, and has performed all necessary investigations, recording and/or salvage of the site, location or remains. All investigation, recording and salvage work shall be

performed as expeditiously as possible so that no public construction project will be unduly impaired, impeded or delayed.

(3) If in the course of performing public construction or improvements, historic, prehistoric or archaeological sites, locations, remains or objects are discovered, the department shall be notified and its concurrence shall be requested in continuing the construction or improvement. Upon receipt of this notice, the department shall survey the area to confirm whether the area contains historic, prehistoric, or archaeological data which should be preserved in the public interest. The survey shall be conducted as expeditiously as possible. If, as a result of the survey, it is determined that (a) this data exists in the area, (b) the data has exceptional historic, prehistoric or archaeological significance and should be collected and preserved in the public interest, and (c) it is feasible to collect and preserve the data, the department shall perform the necessary work to collect and preserve the data. This work shall be performed as expeditiously as possible. When it is not feasible to collect the data, the agency shall make all reasonable attempts to avoid the site before proceeding. If in the commission's opinion, the site possesses unusual significance, and is unique to such a degree that the landmark is, or is likely to be, the sole representative of a type or period, the commission may prohibit further construction which would destroy or irreparably harm the landmark.

SECTION 12. No person, not being the owner thereof, and without the written consent of the owner, proprietor, lessee, or person in charge thereof, shall enter or attempt to enter upon the lands of another and intentionally injure, disfigure, remove, excavate, damage, take, dig into, or destroy any historical structure, monument, marker, medallion, or artifact, or any prehistoric or historic archaeological site, American Indian or aboriginal remains located in, on or under any private lands within the state of Tennessee. No person without a permit from the commission, and without written permission of the landowner shall intentionally injure, disfigure, remove,

excavate, damage, take, dig into, or destroy any prehistoric or historic American Indian or aboriginal burial sites.

SECTION 13. Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five hundred dollars (\$500) and not more than five thousand dollars (\$5,000), or by confinement in jail for not more than thirty (30) days, or by both such fine and confinement. Each day of continued violation of any provision of this chapter shall constitute a distinct and separate offense for which the offender may be punished.

SECTION 14. In addition to, and without limiting the other powers of the Attorney General of the state of Tennessee and without altering or waiving any criminal penalty provision of this act, the Attorney General shall have the power to bring an action in the name of the state of Tennessee in any court of competent jurisdiction to enjoin violations or threatened violations of this chapter, and for the return of items taken in violation of the provisions hereof, and for the restoration of alterations made in violation of the provisions hereof. The venue of such actions shall lie in the county in which the activity sought to be enjoined is alleged to be taking place, or in the county from which the items were taken. Any citizen in the state of Tennessee shall have the power to bring an action in any court of competent jurisdiction to enjoin violations or threatened violations of this act, and for the return of items taken in violation of the provisions hereof. The venue of such actions shall be in the county in which the activity sought to be enjoined is alleged to be taking place, or in the county from which the items were taken.

SECTION 15. The chief administrative officers of all state agencies and of all state and local governments are authorized and directed to cooperate with and assist the commission and the Attorney General in carrying out the intent of this chapter. All law enforcement agencies and officers, state and local, are authorized and directed to assist in enforcing and in carrying out the intent of this chapter.

SECTION 15. This act shall take effect July 1, 1998, the public welfare requiring it.



